

NOTICE OF ACTION.

notice of an action brought for the wrongful seizure and sale of goods under the execution: *Dollery v. Whaley*, 12 C.P. 105; but the bailiff himself was held entitled to notice of an action, brought under such circumstances, notwithstanding he had been indemnified, and even though acting under a warrant not under seal: *Anderson v. Grace*, 17 U. C. Q. B. 96; *Sanderson v. Coleman*, 4 U. C. Q. B. 119; *Lough v. Coleman*, 29 U. C. Q. B. 367; *McCance v. Bateman*, 12 C. P. 469. In *McWhirter v. Corbett*, 4 C. P. 203, however, it was held that a sheriff sued for wrongful acts done under a *fi. fa.* issued in a private suit is not entitled to notice of action, and this was approved in *Moran v. Palmer*, 13 C. P. at p. 532; and, following *McWhirter v. Corbett*, it was held that an official assignee sued for trespass in taking and selling goods was not entitled to notice: *Archibald v. Haldan*, 30 U. C. Q. B. 30; but the learned judge who delivered the judgment of the Court, stated that but for the prior decision he would have come to a different conclusion. A Division Court bailiff, sued for wrongfully neglecting to pay over money levied by him in the course of his duty, is not entitled to notice of action, see *Dale v. Cool*, 6 C. P. 544; *McLeish v. Howard*, 3 App. R. 503.

A special constable sued for wrongful arrest is entitled to notice, R. S. O. c. 83, s. 22, *Sage v. Duffy*, 11 U. C. Q. B. 30, but not a private person who wrongfully gives another into custody, *Brooker v. Field*, 9 C. & P. 651—unless he be authorized to do so under the Crimes Act, 32 & 33 Vict. c. 29 (D.). A revenue officer sued for seizing goods in the course of his duty, or who conceives he has authority so to act, is entitled to notice, see the Customs Act, 46 Vict. c. 12, s. 226 (D.); *Wadsworth v. Morphy*, 1 U. C. Q. B. 190; and so is a person, not at the time of the seizure authorized to act as a revenue officer, but whose act is subsequently adopted by the

collector: *Wadsworth v. Morphy*, 2 U. C. Q. B. 120.

School trustees are also entitled to notice when sued for acts done in their corporate capacity, even though they may purport to act individually, if in fact they were acting in discharge of their duty as trustees: *Spry v. Mumby*, 11 C. P. 285. So also are collectors of school taxes, *Id.*, and arbitrators between school trustees and a teacher: *Kennedy v. Burness*, 15 U. C. Q. B. 487; *Hughes v. Pake*, 25 U. C. Q. B. 95. Poundkeepers are entitled to notice: *Davis v. Williams*, 13 C. P. 365. But a constable sued for wrongfully impounding sheep and cattle is held not to be entitled to notice: *Ibbotson v. Henry*, 8 O. R. 625. The correctness of this decision, however, we think, is open to doubt. One of the learned judges based his conclusion on the ground that the constable did not honestly believe that such a state of facts existed as would, if it had existed, have justified the taking and impounding of the cattle; and the other learned judge proceeded on the ground that it was no part of the duty of the defendant as a constable to take up and impound cattle. The real question, however, by which the right to notice should have been determined we take to be this: "Did the defendant in doing as he did act as a constable?" He may have altogether mistaken or exceeded his duty; but that we think, on the authority of *Chamberlain v. King*, L. R. 6 C. P. 478, is immaterial. Although, as we have seen, a registrar of deeds who is sued for damages resulting from his negligently omitting a document from an abstract, has been held not entitled to notice, yet a registrar sued for overcharges is entitled to notice: *Ross v. McLay*, 40 U. C. Q. B. 87.

It is not necessary to give notice of every action brought against a public officer. Notice is only necessary when the action is to recover damages for the wrongful act complained of. In actions